

**STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION**

Ken Patel	:	
	:	
vs.	:	
	:	
MidAmerican Energy Company	:	
	:	ICC Docket No. 11-0614
Complaint as to no discloser of the terms	:	
of the contracts, misrepresentation in	:	
Chicago, Illinois.	:	

**VERIFIED REPLY BRIEF ON EXCEPTIONS
OF MIDAMERICAN ENERGY COMPANY**

Respondent MidAmerican Energy Company (“MidAmerican”), by its counsel DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of the Illinois Commerce Commission (“Commission”) and in accordance with the February 2, 2012 cover letter accompanying the Administrative Law Judge’s Proposed Order in this proceeding, submits this Reply Brief on Exceptions, and respectfully states as follows:

1. The February 2, 2012 Proposed Order issued by the Administrative Law Judge (“ALJ’s Proposed Order”) properly recommends dismissal of this case with prejudice. After two lengthy substantive hearings, the submission of a comprehensive Motion to Dismiss by MidAmerican, a Response thereto from the Complainant Ken Patel (“Mr. Patel”), a Reply from MidAmerican, as well as a Proposed Order from MidAmerican to which Mr. Patel did not respond and the ALJ’s Proposed Order, it is now well established that MidAmerican’s Motion to Dismiss should be granted, as set forth in the ALJ’s Proposed Order.

2. On February 15, 2012, Mr. Patel served a document entitled “Proposed Order and Brief on Exceptions” (“Mr. Patel’s Brief on Exceptions”). That two-page document does not contain any language that could reasonably be construed as a Proposed Order. Rather, it

contains limited comment upon the Findings and Ordering Paragraphs of the ALJ's Proposed Order. Therefore, MidAmerican understands Mr. Patel's February 15, 2012 document to be Mr. Patel's Brief on Exceptions to the ALJ's Proposed Order.

3. MidAmerican notes that Mr. Patel's Brief on Exceptions does not contain proposed substitute language for the ALJ's Proposed Order. According to the February 2, 2012 cover letter that accompanied the ALJ's Proposed Order, Briefs on Exceptions lacking proposed substitute language "shall be stricken." (*See also* 83 Ill. Admin. Code. 200.830(b).) Accordingly, Mr. Patel's Brief on Exceptions should be stricken and the Proposed Order entered as unopposed.

4. Moving beyond that plain deficiency, however, Mr. Patel's Brief on Exceptions contains no substantive information or argument that should change the ALJ's Proposed Order in any respect. That Proposed Order contains an accurate summary of the pertinent background information and a fully justified legal analysis together with appropriate findings and conclusions. Accordingly, the ALJ's Proposed Order should be adopted in full by the Commission.

5. Mr. Patel's Brief on Exceptions adds nothing to the lengthy hearings that have occurred in this proceeding, during which Mr. Patel has been afforded a repeated opportunity to articulate the factual and legal basis for his complaint. (*See* Transcripts of the October 6, 2011 and January 9, 2012 Hearings, Tr. at 1-88.)

6. Nor does Mr. Patel's Brief on Exceptions respond substantively to either MidAmerican's Motion to Dismiss or the ALJ's Proposed Order. Basically, Mr. Patel's Brief on Exceptions contains nothing more than a series of short, unsubstantiated, conclusory statements, the overall meaning of which is confusing, at best. For example, although Mr. Patel plainly does

not think that this case should be dismissed, paragraph 3 of his Brief on Exceptions states that “Complainant agrees with the representations contained in Number 3 of the Finding and Orders Paragraph [sic].” Paragraph 3 of the Findings and Ordering Paragraphs of the ALJ’s Proposed Order, to which Mr. Patel indicates agreement, states that the “recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law.” (ALJ’s Proposed Order at 5, ¶ 3.) In other words, Mr. Patel indicates he is agreeing with the findings and conclusions of the ALJ’s Proposed Order, which quite clearly calls for dismissal of Mr. Patel’s complaint with prejudice.

7. Notwithstanding these confusing statements, the bottom line is that nothing in Mr. Patel’s Brief on Exceptions comes close to addressing the fundamental fact that the August 6, 2010 written extensions of two Retail Electric Supplier Agreements are valid, enforceable contracts that control the relationship between Mr. Patel’s hotels and MidAmerican.

8. Respectfully, Mr. Patel’s Brief on Exceptions, like his earlier filings and statements at hearings, completely fails to confront, or even acknowledge, clear Illinois law, which sets forth specific and demanding standards applicable to a complaint alleging misrepresentations about contractual relations. “[T]he cardinal rule of contract interpretation is to discern the parties’ intent from the contract language.” (*Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008), citing *Virginia Surety Co. v. Northern Insurance Co.*, 224 Ill. 2d 550, 556 (2007).) This common sense approach follows from the “four corners” rule that the Illinois Supreme Court has followed for decades, which provides that:

An agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence.

(*Air Safety, Inc. v. Teachers Realty Corporation*, 185 Ill. 2d 457, 462 (1999), quoting *Western Illinois Oil Co. v. Thompson*, 26 Ill. 2d 287, 291 (1962).) Thus, the focus is on “the language of the contract alone.” (*Air Safety*, 185 Ill. 2d at 462, citing *Rakowski v. Lucente*, 104 Ill. 2d 317, 323 (1984).)

9. The types of allegations made by Mr. Patel and repeated in part in Mr. Patel’s Brief on Exceptions cannot form the basis for a valid complaint under Illinois law. On the contrary, Illinois law is specifically very conservative and constrained with respect to circumstances under which someone may proceed with a complaint about alleged misrepresentations in connection with contracts. A complainant must meet “a high standard of specificity” to allege a fraud or misrepresentation. (See, e.g., *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803-05 (1st Dist. 2005) (granting motion to dismiss for lack of “requisite specificity” in the complaint).) Further, in cases involving allegations of fraud or misrepresentation, Illinois law observes a “presumption that all persons are honest.” (*All American Roofing, Inc. v. Zurich American Insurance Co.*, 404 Ill. App. 3d 438, 451 (1st Dist. 2010).) To rebut that presumption, a complainant must “establish by clear and convincing evidence” the basis for any wrongdoing. (*Id.*)

10. Nothing in Mr. Patel’s Brief on Exceptions or other filings comes close to meeting the exacting standard embodied in that case law. On the contrary, it is now established that by entering into the 2010 Extensions, Mr. Patel’s hotels locked in a *lower rate* than those entities had previously had paid for electricity. That fact is uncontroverted. (See Tr. at 12:7-12; 20:12-18.)

11. By providing Mr. Patel with savings, MidAmerican certainly has not breached any agreement. On the other hand, Mr. Patel has breached the Agreements by terminating them

prematurely and without cause. (*See* MidAmerican Motion to Dismiss at ¶¶ 4, 13.) He has further breached the Agreements by refusing to pay MidAmerican for its Losses and Costs associated with that breach. (*See id.*)

12. Thus, the Proposed Order is entirely correct that Mr. Patel cannot state any claim for relief that falls under the Commission’s jurisdiction under the Public Utilities Act.

13. Finally, the Proposed Order properly finds that Mr. Patel has no claim under either the Electric Supplier Act (220 ILCS 30/1, et seq.) or the Electric Commerce Security Act (5 ILCS 175/1-101, et seq.), as Mr. Patel himself conceded in his filings. (*See* Mr. Patel’s Response to MidAmerican Motion to Dismiss at ¶ 14, stating that Mr. Patel has “no comment” regarding the explanation of Mr. Patel’s lack of any claim under those statutes as contained in paragraph 14 of MidAmerican’s Motion to Dismiss.)

WHEREFORE, for the reasons stated herein and in MidAmerican’s Verified Motion to Dismiss and MidAmerican’s Reply in Further Support of Motion to Dismiss, MidAmerican respectfully requests that the Commission:

1. Enter the ALJ’s Proposed Order dismissing Mr. Patel’s complaint with prejudice,
and
2. Grant such further relief as the Commission deems just and appropriate.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By: /s/ Christopher J. Townsend
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STATE OF ILLINOIS)
) SS
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VERIFICATION

Christopher N. Skey, being first duly sworn, on oath deposes and says that he is one of the attorneys for MidAmerican Energy Company, that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information and belief.

Christopher N. Skey

Subscribed and sworn to me
this ____th day of February __, 2012.
